



CONTRACT BETWEEN:

TOWN OF BEDFORD, MA

And

XXX

This contract, made and entered into this 19th day of December 2016 between the Town of Bedford, a Municipal corporation of Middlesex County, Massachusetts (hereinafter called "the Town"), and xxx (hereinafter called "the Consultant," "the Designer" or "the Contractor"), to provide a feasibility study for the creation of a town historical museum, as outlined in the Request for Qualifications dated October 26, 2016.

The Town and the Consultant mutually agree as follows:

SECTION 1. SCOPE OF SERVICES:

The Consultant will carry out the provisions of the project Scope of Services, a copy of which is attached and incorporated herein as Attachment A. The provisions of the RFQ and Contractor's Response are incorporated herein by reference. In the event of any conflict among the Contract Documents, the Documents shall be construed according to the following priorities:

- Highest Priority: Amendments to Contract (if any)
- Second Priority: Contract
- Third Priority: Addenda to RFQ
- Fourth Priority: RFQ
- Fifth Priority: Contractor's Response.

SECTION 2. TIME OF PERFORMANCE:

The services of the Consultant are to commence on the execution date of this contract. The schedule for completion of the work is as follows:

- | | |
|----------------------------|-------------------|
| 1. Qualifications due date | November 30, 2016 |
| 2. Contract Award Date | December 19, 2016 |
| 4. Phase I Completion | February 8, 2017 |
| 5. Phase II Completion | March 15, 2017 |
| 6. Phase III Completion | May 1, 2017 |

SECTION 3. COMPENSATION BASIC FEE:

- 1 For the performance of all services required in this contract the Designer shall be compensated by the Owner in accordance with the lump sum fee, of **Thirty Thousand Dollars no cents \$30,000.00**. The Consultant hereby states that this fee recognizes any tax incentives available to the Consultant under either federal or state law. The Consultant is an independent contractor and is not an agent or employee of the Town. The Consultant's fee shall be considered to include all costs incurred by the Consultant with respect to the services provided herein, including but not limited to fringe benefits, travel, photographic and copying costs, and general cost of doing business.
- 2 If there is a substantial change in the specified scope of services provided in this contract that is approved by the Owner's Designated Representative, then the Town will agree to an adjustment in the Designer's Basic Fee. Delay of three months or more by the Owner or a change in the total construction cost of the Project exceeding 25% of the original cost estimated will be considered a substantial change in scope of services.

SECTION 4. METHOD OF PAYMENT:

The Consultant shall invoice the Town of Bedford according to the following schedule:

Phase	%	\$
Phase I Baseline Documentation	40%	\$12,000
Phase II Regulatory Analysis and Design Concepts	30%	\$9,000
Phase III Schematic Design and Constructions Costs	30%	<u>\$9,000</u>
Total Cost:		\$30,000

Work products due at the end of each phase must be submitted to and approved by the Town of Bedford before the consultant invoice is submitted. Upon receipt and approval of each invoice by the Director of Facilities the Town shall pay one hundred percent (100%) of the amount so submitted for payment. Payment for each invoice shall be made before the scheduled submittal date of the next invoice. No payment shall be made in advance.

If the Town objects to all or part of any invoice, the Town shall notify the Contractor in writing within two (2) weeks of the date of receipt of the invoice, and shall pay that portion of the invoice not in dispute within thirty (30) days after the date of receipt of the invoice.

Payment of the amounts due under this Contract shall release the Town, its officers, employees, boards, commissions, committees, agents and representatives, from any and all claims and liability in any way relating to this Contract or anything done in pursuance thereof.

No payment by the Town to the Contractor shall be deemed to be a waiver of any right of the Town under this Contract or a ratification by the Town of any breach hereof by the Contractor.

SECTION 5. DRAWINGS, SPECIFICATIONS, REPORTS AND CALCULATIONS:

The Owner shall have unlimited rights, for the benefit of the Owner, in all reports, programs, drawings, designs, and specifications, developed in the performance of this contract, including the right to use same on any other Projects without additional cost to the Owner for use on this Project, for reference in connection with Owner's use, maintenance or occupancy of this Project, or for additions or renovations to this Project; and with respect thereto the Consultant agrees and hereby grants to the Owner an irrevocable royalty-free license to all such reports, programs, drawings, designs and specifications which he may cover by copyright and to all designs as to which he may assert any rights or establish any claim under any patent or copyright laws when the consultant is paid in full for services rendered. The Consultant shall not be responsible for changes made in the documents without the Consultant's authorization, nor for the Owner's use of the documents on Projects other than the Project. Contractor shall transfer to the Owner the rights to use the Contractor's design documents to construct, maintain, alter or renovate the project.

SECTION 6. THE CONTRACT DOCUMENTS

The following, together with this Agreement, form the Contract and all are as fully a part of the Contract as is attached to this Agreement or repeated herein: Contract Agreement, Request for Qualifications dated October 26, 2016, Town of Bedford Standard General Conditions, for Design Services and Scope of Services. Terms used in this Agreement which are defined in the General and Supplemental Conditions of the Contract shall have the meanings designated in those Conditions.

SECTION 7. INSURANCE:

The Designer shall provide and maintain insurance at its own expense until the completion of Designer's Services as set forth below,

- 1) General Liability of at least \$1,000,000 Bodily Injury and Property Damage Liability, Combined Single Limit with a \$3,000,000 Annual Aggregate Limit. The Town should be named as an "Additional Insured."
- 2) Automobile Liability (applicable for any contractor who has an automobile operating exposure) of at least \$1,000,000 Bodily Injury and Property Damage per accident. The Town should be named as an "Additional Insured."

- 3) Workers' Compensation Insurance as required by law.
- 4) Architects and Engineers Professional Liability (applicable for any architects or engineers involved in the project) of at least \$1,000,000/occurrence, \$3,000,000 aggregate. The Town should be named as an Additional Insured.
- 5) Property Coverage for materials and supplies being transported by the contractor, as the Town's Property Contract provides coverage for personal property within 1000 feet of the premises.
- 6) Umbrella Liability of at least \$5,000,000/ occurrence, \$5,000,000/aggregate. The Town should be named as an Additional Insured.
- 7) There shall be no Waiver of Subrogation language for the above coverage.

SECTION 8. INDEMNIFICATION:

Design Consultant shall indemnify and hold harmless Owner and its respective BOARDS, COMMISSIONS, COMMITTEES, partners, subsidiaries, parent, and affiliates, and their respective partners, directors, officers, agents, and employees (collectively, the Indemnities), from losses, claims, liabilities, injuries, damages, and expenses, including legal fees, that are allowed by law, and that arise from and/or related to the Design Consultant's and its sub-consultant's negligent performance of the professional services set forth in this agreement

Neither the Town of Bedford, nor its officers, employees, boards, committees, commissions, agents and representatives shall be under any personal obligation or incur any personal liability by reason of this Agreement, the execution thereof or anything relating thereto which arises out of the breach or violation of any provision of this Agreement, or the violation of any Federal, Massachusetts or local statute, by-law, rule, regulation, order or directive, or which relates to personal injury or property damage suffered by the Designer or its employees, regarding the subject matter of this Agreement.

SECTION 9. APPROPRIATION:

The execution of a contract is subject to adequate financial appropriations in accordance with M.G.L. c.44, §31C for the item(s) or project(s) advertised. The lack of adequate financial appropriation by the Town for the bid item(s) or project(s) constitutes grounds to reject all bids/responses or those bids/responses that exceed the financial limitations imposed by Bedford's Town meeting.

SECTION 10. VALIDATION:

This Contract will not be valid until signed by the Awarding Authority.

SECTION 11. EXECUTION IN COUNTERPARTS:

This Agreement may be executed in several counterparts.

SECTION 12. NOTICES:

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or trailed by registered mail, postage prepaid, to the parties at the addresses set herein:

Owner Designated Representative under this contract:

Taissir Alani, Director of Facilities
Bedford Facilities Department
101 McMahon Road, Bedford 01730
Phone (781) 275-5290, Fax (781) 275-8429

With a copy to:

Brandon H. Moss, Town Counsel
Murphy, Hesse, Toomey & Lehane, LLP
300 Crown Colony Drive, Suite 410
Quincy, MA 02169

Designer's Designated Representative under this contract:

SECTION 13. APPLICABLE LAW:

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, regardless of choice of law principles. Any and all applicable statutory provisions are incorporated herein by reference and are made part of it. To the extent that any provision herein conflicts with statute, the statutory provision shall govern. The Consultant shall comply with all provisions of Federal, Massachusetts and local law applicable to his work including, without limitation, statutes, by-laws, rules, regulations, orders and directives, as amended, and including, without limitation, the Williams-Steiger Occupational Safety and Health Act, as amended, and related regulations, as amended, in effect throughout the term of this Contract and any extension or renewal thereof. Without limitation, the Designer shall comply with the provisions of Chapter 149, Section 26 to 27D of the Massachusetts General Laws, as amended, and the applicable minimum wage rates as determined by the Massachusetts Commissioner of Labor and Industries. This Agreement shall be considered to include in their entirety all terms respecting workers' compensation insurance and other terms required to be included in it by Chapter 152 of the Massachusetts General Laws, as amended, as though such terms were set forth in their entirety herein.

SECTION 14. ENTIRE AGREEMENT:

Other than any and all documents contained herein and in the Contract documents listed in Section 6 of this Agreement, the parties' Agreement constitutes the entire understanding between the Awarding Authority and the Designer. No waiver, consent, modification or change of terms of this agreement shall bind either party unless, it is in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only and is in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein. The Designer, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Should any provisions of this Contract be declared null and void by a Court of competent jurisdiction, the remaining provisions of this Contract shall continue in full force.

SECTION 15 NO REMEDY EXCLUSIVE; WAIVER:

No remedy herein conferred upon or reserved to the Awarding Authority is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay in enforcing any remedy available to the Town of Bedford shall constitute a waiver thereof. No waiver of any term or provision hereof shall be effective against the Town of Bedford unless in writing, signed by the Town of Bedford.

SECTION 16. TERMINATION:

The Town shall have the right to terminate this contract for convenience as specified in Article 15 of the General Conditions for Design Services.

SECTION 17. CERTIFICATIONS:

The Designer hereby certifies that:

1. NON-COLLUSION CERTIFICATION: The undersigned certifies under penalties of perjury that this response is in all respects *bona fide*, fair and made without collusion or fraud with any other person. As used in this Paragraph, the word "person" shall mean any natural person, joint venture, partnership, union, committee, club, corporation, or any other business or legal entity.
2. TAXES: As required by MGL Chapter 62C, Section 49A, the undersigned certifies that he or she has complied with all laws of the Commonwealth relating to taxes, reporting of employees and Contractors, and withholding and remitting child support.

3. NON-DEBARMENT: The undersigned hereby certifies, under penalties of perjury, that the said undersigned is not presently debarred from doing public construction work in the Commonwealth under the provisions of Chapter 29, Section 29 F, or any other applicable debarment provisions of any other Chapter of the General Laws, or any rule or regulation promulgated there under.
4. NONSEGREGATED FACILITIES: The undersigned hereby certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and tat he does not permit his employees to perform their services at any location, under his control where segregated facilities are maintained. The Designer certifies further that he will not maintain or provide for employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The Designer agrees that a breach of this certification will be a violation of the Equal Opportunity clause in. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom or otherwise. The Designer agrees that (except where he has obtained identical certification from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractor prior to the award of subcontracts exceeding \$20,000 which are not exempt from provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

Note: The penalty for making false statements in offers is prescribed in 18 U.S. C. Section 1001.

5. The Designer certifies that it shall not undertake any action that shall violate M.G.L. c. 268A, the Commonwealth of Massachusetts Conflict of Interest Law.

SECTION 18. VALIDATION

This Contract will not be valid until signed by the Awarding Authority.

SECTION 19. KEY PERSONNEL

The Designer's key personnel assigned to this project and their project roles are as stated in the Response submitted by the Designer attached hereto.

There shall be no change to these personnel assignments without the prior written consent of the Town. In the event substitution of personnel is requested by the Designer or the Town, written notice of such request shall be timely provided in writing to the other party. The Town shall have authority to reject any proposed replacement personnel if it reasonably and timely deems such proposed replacement to be unsatisfactory.

SECTION 20. USE OF ALCOHOLIC BEVERAGES AND CONTROLLED SUBSTANCES PROHIBITED

The Designer hereby acknowledges that the use of alcoholic beverages, narcotics, and mood altering substances, except for current valid, legal prescriptions, by any officer, employee, agent, or representative of the Contractor is prohibited on Town property which is the subject matter of this Agreement and during all hours of work under this Agreement. If any officer, employee, agent, or representative of the Designer violates the foregoing provision, the Town shall have the right to order that such officer, employee, agent, or representative of the Designer shall not be permitted to return to work on this Agreement. Under such circumstances, the Designer shall promptly remove the subject officer, employee, agent, or representative from the job site and shall not permit the subject officer, employee, agent, or representative to perform further work in conjunction with this Agreement.

SECTION 21. NO SMOKING

Pursuant to Massachusetts General Laws (M.G.L.) c. 270, §22, the Commonwealth of Massachusetts Smoke free Workplace Law, the Designer, its officers, employees, agents, and representatives shall refrain from smoking and from using tobacco products in any public building.

SECTION 22. DELAYS/Force Majeure

Except as specifically set forth in this Agreement, neither party shall hold the other responsible or liable for damages or delays in performance caused by acts of God, interruptions in the availability of labor, or other events beyond the control of the other party, or that could not have been reasonably foreseen or prevented. For this purpose, such acts or events shall include unusually severe weather affecting performance of services, floods, epidemics, wars, riots, strikes, lockouts, or other industrial disturbances, protest demonstrations, and project site conditions which could not have been reasonably anticipated. Should such acts or events occur, both parties shall use their best efforts to overcome the difficulties arising and to resume as soon as reasonably possible the normal pursuit of the services for the Project.

SECTION 23. KEY PROVISIONS REQUIRED BY MASSACHUSETTS LAW

- A. The Contractor hereby certifies that it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for or in connection with, the award of this Contract. (Statutory reference M.G.L. c.7C, §51)
- B. The Contractor hereby certifies that no consultant to or subcontractor for the Contractor has given, offered or agreed to give any gift, contribution or offer of employment to the Contractor, or to any other person, corporation or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the Contractor. (Statutory reference: M.G.L. c.7C, §51)
- C. The Contractor hereby certifies that no person, corporation or other entity, other than a bona fide full time employee of the Contractor, has been retained or hired by the Contractor to solicit for or in any way assist the Contractor in obtaining this Contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Contract to the Contractor. (Statutory reference: M.G.L. c.7C, §51)
- D. The Contractor hereby certifies that it has internal accounting controls as required by subsection (c) of section thirty-nine R of chapter thirty of the Massachusetts General Laws and that the Contractor has filed and will continue to file an audited financial statement as required by subsection (d) of said section thirty-nine R. (Statutory reference: M.G.L. c.7C, §51)
- E. The Contractor shall maintain all books, records and accounts related to the Project in compliance with the following:
 - 1. The Contractor shall make, and keep for at least six (6) years after final payment, books, records and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor.
 - 2. Until the expiration of six (6) years after final payment, the Town, the Office of the Inspector General and the Commissioner of Capital Asset Management and Maintenance shall have the right to examine any books, documents, papers or records of the Contractor and of its subcontractors and consultants that directly pertain to, and involve transactions relating to, the Contractor or its subcontractors and consultants.
 - 3. The Contractor shall describe any change in the method of maintaining records or recording transactions which materially affects any statements filed with the Town, including in the Contractor's description the date of the change and reasons therefor, and shall accompany said description with a letter from the Contractor's independent certified public accountant approving or otherwise commenting on the changes.
 - 4. The Contractor has filed a statement of management on internal accounting controls as set forth in subparagraph 23.E.6 below prior to the execution of this Contract.

5. The Contractor has filed prior to the execution of this Contract and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in subparagraph 23.E.6 below.
 6. The Contractor shall file with the Town a statement of management as to whether the system of internal accounting controls of the Contractor and its subsidiaries reasonably assures that:
 - a. Transactions are executed in accordance with the management's general and specific authorization;
 - b. Transactions are recorded as necessary: (i) to permit preparation of financial statements in conformity with generally accepted accounting principles, and (ii) to maintain accountability for assets;
 - c. Access to assets is permitted only in accordance with management's general or specific authorization; and
 - d. The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any difference.
 7. The Contractor shall also file annually with the Town a statement prepared and signed by an independent certified public accountant, stating that such accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to:
 - a. whether the representations of management in response to this Paragraph 23.E are consistent with the result of management's evaluation of the system of internal accounting controls; and
 - b. whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the Contractor's financial statements.
 8. The Contractor shall annually file with the Commissioner of Capital Asset Management and Maintenance and the Town during the term of this Contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the Town upon request.
 9. Records and statements required to be made, kept or filed in compliance with the provisions of this paragraph 34.E shall not be public records as defined in section seven of chapter four of the Massachusetts General Laws and shall not be open to public inspection, except as provided in subparagraph 23.E.2. (Statutory reference: M.G.L. c.30, §39R) The Contractor shall comply in all other ways with M.G.L. c. 30, §39R, which is specifically incorporated herein by reference.
- F. The Contractor and its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Contractor in the preparation of Response documents, as reasonably determined by the Town. (Statutory reference: M.G.L. c.7C, §51.)

SIGNATURES:

IN WITNESS WHEREOF, on the day and year hereinabove, first written the Designer (if individual) has hereunto set his hand and seal – (if partnership) has caused these presents to be signed and sealed by its partner in the name of the partnership – (if Corporation) has caused these presents to be signed and sealed in its name and behalf, and its corporate seal to be hereto affixed by the signatory below authorized so to do* -- and in each case the signatory make the representations and certifications set forth in Article 26 under the pains and penalties of perjury, and the Owner has signed these presents in behalf of the Commonwealth.

EXECUTED IN TRIPLICATE:

- If a Corporation, attach to each signed copy of this contract an attested copy of the vote of the Corporation authorizing the said signing and sealing.

Signed:

Designer:

Consultants Authorized Signature

Date

Town of Bedford:

Selectmen

Date

Selectmen

Date

Selectmen

Date

Selectmen

Date

Selectmen

Date

Pursuant to M.G.L. c. 44 §31C:
Certification of Funds:

I hereby certify that an appropriation in
the amount of this Contract is available.

Approved as to matters of form only, and not as to
substance:

Director of Finance/Town Accountant

Counsel for the Town of Bedford

CERTIFICATE OF AUTHORITY

(Corporations Only)

At a duly authorized meeting of the board of Directors of the _____ held on
(Name of Corporation)

_____ it was VOTED, that _____
(Date) (Name) (Officer)

of this company, be and he/she hereby is authorized to execute contracts and bonds in the name and on behalf of said company, and affix its corporate seal hereto; and such execution of any contract or obligation in this company's name on its behalf by such _____ under seal

(Officer)

of the company, shall be valid and binding upon this company.

A True Copy,

Attest: _____

Title: _____

Place of Business: _____

Date of this Contract: _____

I hereby certify that I am the clerk of _____ that _____
is the duly elected _____ of said company, and that the above vote has not
been amended or rescinded and remains in full force and effect as the date of this contract.

(Clerk)

Corporate Seal